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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

GRACIE GENE KING,

Defendant and Appellant.

F044110

(Super. Ct. No. F03905735-7)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Alan M. Simpson, Judge.

Deborah Prucha, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Charles A. French and Angelo S. Edralin, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Harris, A.P.J., Buckley, J., and Levy, J.

Appellant Gracie King pled guilty to forgery (Pen. Code, § 470.)¹ The court placed her on three years' probation.

On appeal, appellant's sole contention is that the court erred in ordering as conditions of probation that she pay probation supervision costs and the cost of preparation of the presentence report. We will strike the challenged probation conditions and remand for further proceedings.

DISCUSSION²

Section 1203.1b "permits the trial court to require a defendant to reimburse probation costs if the court determines, after hearing, that the defendant has the ability to pay all or a portion of such costs." (*People v. Bennett* (1987) 196 Cal.App.3d 1054, 1056.) However, as appellant contends and the People do not dispute, probation may not be conditioned on the payment of such costs, including costs of probation supervision and preparation of the presentence report. (*People v. Hart* (1998) 65 Cal.App.4th 902, 906-907; *People v. Bennett* (1987) 196 Cal.App.3d 1054, 1056-1057.)

The People contend the challenged orders were not conditions of probation. The People assert that although "when the court announced its sentence, it mentioned appellant must pay the cost of probation supervision interspersed with appellant's actual conditions of probation," the court "never stated that payment of the cost of probation supervision was a condition of her probation." We disagree.

At the sentencing hearing, after the matter was submitted, the court, addressing appellant, stated, "You're placed on formal probation for a period of three years under the following terms and conditions" Thereafter, still addressing appellant, the court made various orders, including the following: "[You are to] [p]ay fees for Probation

¹ All statutory references are to the Penal Code.

² Because the facts of the instant offense are not relevant to the issue raised on appeal, we will forgo a recitation of those facts.

Supervision, pre-sentence investigation reports” The court went on to make other orders, after which the following exchange took place:

“THE COURT: . . . Do you understand the terms and conditions of probation, ma’am?

“THE DEFENDANT: Yes, Your Honor.

“THE COURT: Do you accept those terms and conditions?

“THE DEFENDANT: Yes Your Honor.

“THE COURT: That will be the order.”

Thus, the record reveals that first, the court referred to the “following” probation conditions; thereafter, the court made the challenged orders; and finally the court asked appellant if she accepted “those terms and conditions.” (Emphasis added.) On this record, the challenged orders were, fairly construed, included among the conditions of probation.

The People also argue that “the minute order generated by the court commemorating appellant’s sentence demonstrates that the costs of probation supervision were not meant to be a condition of her probation.” The People base this argument on the following. The section of the clerk’s minute order that purports to list “TERMS OF PROBATION” makes no mention of the costs of probation supervision or the presentence report. Rather, the court’s orders that appellant pay these costs appear in the section entitled “FEES.”

This contention too is without merit. It is the court’s oral pronouncement that constitutes the court’s judgment; entry of the order in the minutes is purely a clerical function. (*People v. Mesa* (1975) 14 Cal.3d 466, 471.) In the event of a discrepancy between the court’s oral pronouncement and the judgment reflected in the minutes, we presume the discrepancy results from a clerical error. (*Ibid.*) Accordingly, based on the court’s oral pronouncement, we conclude the court ordered payment of the costs of probation supervision and the preparation of the presentence report as conditions of

probation. And as indicated above, in doing so the court erred. (*People v. Hart*, supra, 65 Cal.App.4th at pp. 906-907; *People v. Bennett*, supra, 196 Cal.App.3d at pp. 1056-1057.) We will therefore strike the challenged conditions.

Although the court erred, as indicated above section 1203.1b permits the court to require a defendant to reimburse the costs of preparation of the presentence report and costs associated with probation supervision. Before such reimbursement is imposed, however, the “court shall order the defendant to appear before the probation officer . . . to make an inquiry into the ability of the defendant to pay The probation officer shall inform the defendant that the defendant is entitled to a hearing . . . in which the court shall make a determination of the defendant’s ability to pay and the payment amount. The defendant must waive the right to a determination by the court of his or her ability to pay and the payment amount by a knowing and intelligent waiver.” (§ 1203.1b, subd. (a).) Accordingly, we will remand this matter for compliance with section 1203.1b. (§ 1260 [on appeal “the court . . . may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances”]; *People v. Adams* (1990) 224 Cal.App.3d 705, 712-714 [hearings under section 1203.1b may be held at any time during probationary period].)

DISPOSITION

The conditions of probation that appellant pay the costs of probation supervision and the preparation of the presentence report are stricken. The court is directed to conduct further proceedings to determine the appropriateness and amount of probation costs under section 1203.1b. In all other respects, the judgment is affirmed.